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EX PARTE OR LATE FILED

September 3, 1999

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DEDERAL COMMUNICATIONS COMMISSION

Honorable William E. Kennard, Chairman Federal Communications Commission 445 12th Street, N.W. Washington, D. C. 20554

Re:

BERNARD KOTEEN*

ALAN Y. NAFTALIN

ARTHUR B GOODKIND

GEORGE Y. WHEELER

CHARLES R. NAFTALIN

JULIE A. BARRIE

* SENIOR COUNSEL

MARGOT SMILEY HUMPHREY PETER M. CONNOLLY

Algreg Cellular Engineering, et al. CC Docket No. 91-142/et al.

Dear Chairman Kennard:

This letter requests a meeting at your earliest convenience with you and the Commission personnel involved in the above-referenced proceedings. This request is being made on behalf of 18 of the 22 licensees whose authorizations are still tied up in the proceedings, and is joined in by the six groups of petitioners who are parties to the consolidated proceedings (the" Party Petitioners"). All parties to the cases, and all other persons who have sought party status, would be invited to the meeting. However, we anticipate that those joining in this request will designate a limited number of representatives to attend so that the number of attendees will be manageable.

The parties requesting the meeting plan to present the public interest considerations that support having the Commission accord top priority to releasing a decision that would resolve all remaining issues pending before the Commission in the above proceedings. The applications

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By Party Petitioners we mean the petitioners which were made parties by the Hearing Designation Order or the Administrative Law Judge and have participated in the case from its inception: Applicants Against Lottery Abuse, Buckhead Cellular Communications Partnership, Cellular Applicants' Coalition, Miller Communications, Inc. and Skywave Partners, Inc., Thomas Domencich, Committee for a Fair Lottery, and ZDT Partnership. We distinguish them from the "Joint Petitioners," represented by A. Thomas Carroccio (the "Carroccio Group"), and Castle Trust, *et al.*, represented by Harry F. Cole (the "Cole Group"), which first sought to enter the proceeding on July 3, 1997 and May 26, 1998, respectively.

² Counsel for all 22 licensees, all party petitioners and the Cole and Carroccio groups, as well as William J. Franklin, are being sent copies of this letter.

Honorable William E. Kennard, Chairman September 3, 1999 Page Number 2.

that lie at the heart of this proceeding have now been pending before the Commission for over ten years. Hardships are being caused by the absence of a final resolution of this case, and disruptions are occurring in efforts to expand and improve service to the public. Needless to say, there have been fundamental changes in the wireless business since the applications involved in this proceeding were filed (between July of 1988 and January of 1989). Market areas that are affected by the proceeding continue to be disadvantaged by the fact that the A Block cellular license has been under a cloud of litigation from the outset.

Notably, the issues that remain to be resolved were greatly simplified in February 1999 by a comprehensive settlement which was joined by all of the applicants and licensees in the case, and all of the Party Petitioners. Attachment A hereto is a copy of an April 15 letter which set out the status of the case as of that date and showed why we believed that the remaining issues were relatively simple. Since then, on April 28, 1999, the Commission released a *Memorandum Opinion and Order* (the *Severance Order*)³, which (a) granted a number of requests for dismissal of pleadings; and (b) severed seven licensees from the *Algreg* proceeding. We applaud the Commission's timely release of the *Severance Order* so promptly after the filing of the global settlement, and appreciate the severity of the Commission's workload. Nevertheless, further actions are required to conclude the proceeding.⁴ Motions are pending before the Commission pertaining to the global settlement, and various filings by persons who sought to intervene in the case for the first time in 1997 need to be resolved. Answers to our latest status inquiries indicate that the timetable for resolving these remaining issues keeps slipping, primarily because of the press of other business.

Time is of the essence. We would like an opportunity to persuade you that the matters remaining here for resolution must be given top priority before the licensing process extends too much farther into a second decade.

³ 14 FCC Rcd 7026

⁴On May 28, 1999, the Cole Group (which has never been made a party) filed a petition for reconsideration of the *Severance Order*. That petition was premised on the assumption that the *Severance Order* had ruled substantively in addition to its procedural rulings. The petition stated that if no substantive ruling had been made, "then no reconsideration would be necessary." In our view, it is clear that the *Severance Order* resolved no pending issue and made no substantive ruling. Consequently, the filing of this Cole Group petition did not diminish the relative simplicity of the issues which remain to be resolved

Honorable William E. Kennard, Chairman September 3, 1999 Page Number 3.

If some member of the staff will advise Alan Y. Naftalin of Koteen & Naftalin regarding the date and time of the meeting, he will undertake to advise all other counsel.

Very truly yours,

By	Carl	W:	Non throb	
•	Carl W. Northrop			بہکہ

Counsel for Party Petitioners and Licensees

Attachment

cc (w/attach.)

Hon. Susan Ness Hon. Harold W. Furchgott-Roth Hon. Michael K. Powell Hon. Gloria Tristani John I. Riffer, Esq. David L. Hill, Esq. Stephen Kaffee, Esq.

By David I Kaufman

By John P. Bankson In

By Larry S. Solomon

A. Thomas Carroccio, Esq. Harry F. Cole, Esq. William J. Franklin, Esq.

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JULIE A. BARRIE
* SENIOR COUNSEL

April 15, 1999

John I. Riffer, Esquire Office of General Counsel Federal Communications Commission 445 12th Street, N.W. Washington, D. C. 20554

Re: Algreg Cellular Engineering, et al.

CC Docket No. 91-142

Dear Mr. Riffer:

The purpose of this letter is to request an immediate meeting, to which all parties to the above-referenced case, and all other persons who have sought party status, would be invited, to discuss the posture of the case in the light of the filings that were made on February 5, 1999.

As you know, following the Commission's June 3, 1997 Memorandum Opinion and Order, 12 FCC Rcd 8148 (the "Order"), a large number of petitions for reconsideration and other filings were submitted to the Commission in the above proceeding. According to our count, five petitions for reconsideration and more than 35 additional filings were submitted between July 3, 1997 and January 11, 1999.

As a consequence of the February 5, 1999 filings, the issues in the case have, we believe, been simplified and it should be possible for the Commission to issue orders promptly to dispose of all matters except for the unique issues relating to the qualifications of Alee Cellular Communications. In view of the very long time this proceeding has taken already, it is in the public interest as well as the interest of the parties to resolve the issues in this proceeding as soon as possible. We would like an opportunity to explain why we think the proceeding is now suitable for ready resolution, and why certain procedural actions, such as severance, are appropriate. The meeting would also provide us an opportunity to answer any questions the Commission may have.

The reasons why we believe the proceeding has now been simplified are, in brief, as follows:

1. All of the permittees and licensees in this proceeding have now concluded

John I. Riffer, Esquire April 15, 1999 Page Number 2.

settlement agreements with the Party Petitioners.¹ Those settlement agreements look toward actions with respect to the licenses and applications in this proceeding which are the same as the Commission reached in its June 3, 1997 *Order*.

2. Excluding the Alee petition for reconsideration of the revocation of its license, the only challenges to the *Order* still before the Commission were filed by the Carroccio Group and the Cole Group. The permittees and the licensees have requested the dismissal of these pleadings as inexcusably late and procedurally defective.²

In sum, the Commission need only act on the February 5, 1999 filings, which stand unopposed, and affirm the holdings of the Order without the delay required by a new consideration of the merits.

If you or someone in your office will advise Alan Y. Naftalin of Koteen & Naftalin regarding the date and time of the meeting, he will undertake to advise all other counsel.

Very truly yours,

By E Ashta Johiton Carl W. Northrop

E. Ashton Johnston

By Clay Maffalin

¹ By Party Petitioners we mean the petitioners which were made parties by the Hearing Designation Order or the Administrative Law Judge and have participated in the case from its inception: Applicants Against Lottery Abuse, Buckhead Cellular Communications Partnership, Cellular Applicants' Coalition, Miller Communications, Inc. and Skywave Partners, Inc., Thomas Domencich, Committee for a Fair Lottery, and ZDT Partnership. We distinguish them from the "Joint Petitioners," represented by A. Thomas Carroccio (the "Carroccio Group"), and Castle Trust, *et al.*, represented by Harry F. Cole (the "Cole Group"), which first sought to enter the proceeding on July 3, 1997 and May 26, 1998, respectively.

² The Carroccio Group filed a petition for reconsideration on July 3, 1997, without having participated in the hearings or the subsequent proceedings before the Review Board and the Commission. The Cole Group filed, as their first submission in this proceeding, a "Statement for the Record" on June 26, 1998, almost a year after the deadline for petitions for reconsideration, and after having had their appeals of the *Order* dismissed by the United States Court of Appeals for the District of Columbia Circuit.

John I. Riffer, Esquire April 15, 1999 Page Number 3.

Ву	Barry Gottfried	Ву	David J. Kaufman 27
By_	Donald J. Evans	Ву	John P. Bankson, Jr.
Ву_	Richard S. Myers	Ву	Larry S. Solomon Som
Ву_	Janes F. Ireland, III	Ву	David L. Hill
Ву_	William E. Zimsky	Ву	Stephen Kaffee

Counsel for Party Petitioners, Licensees and Permittees

cc (by hand): A. Thomas Carroccio, Esquire
Harry F. Cole, Esquire
William J. Franklin, Esquire